

§ 103.4

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approval of a request for oral argument, the AAU shall set the time, date, place, and conditions of oral argument.

(c) *Service precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. In addition to Attorney General and Board decisions referred to in §1003.1(g) of chapter V, designated Service decisions are to serve as precedents in all proceedings involving the same issue(s). Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act. Precedent decisions must be published and made available to the public as described in 8 CFR 103.10(e).

[31 FR 3062, Feb. 24, 1966, as amended at 37 FR 927, Jan. 21, 1972; 48 FR 36441, Aug. 11, 1983; 49 FR 7355, Feb. 29, 1984; 52 FR 16192, May 1, 1987; 54 FR 29881, July 17, 1989; 55 FR 20769, 20775, May 21, 1990; 55 FR 23345, June 7, 1990; 57 FR 11573, Apr. 6, 1992; 68 FR 9832, Feb. 28, 2003; 76 FR 53781, Aug. 29, 2011]

§ 103.4 Certifications.

(a) *Certification of other than special agricultural worker and legalization cases—*(1) *General.* The Commissioner or the Commissioner's delegate may direct that any case or class of cases be certified to another Service official for decision. In addition, regional commissioners, regional service center directors, district directors, officers in charge in districts 33 (Bangkok, Thailand), 35 (Mexico City, Mexico), and 37 (Rome, Italy), and the Director, National Fines Office, may certify their decisions to the appropriate appellate authority (as designated in this chapter) when the case involves an unusually complex or novel issue of law or fact.

(2) *Notice to affected party.* When a case is certified to a Service officer, the official certifying the case shall notify the affected party using a Notice of Certification (Form I-290C). The affected party may submit a brief to the officer to whom the case is certified within 30 days after service of the notice. If the affected party does not wish to submit a brief, the affected party may waive the 30-day period.

(3) *Favorable action.* The Service officer to whom a case is certified may suspend the 30-day period for submission of a brief if that officer takes action favorable to the affected party.

(4) *Initial decision.* A case within the appellate jurisdiction of the Associate Commissioner, Examinations, or for which there is no appeal procedure may be certified only after an initial decision is made.

(5) *Certification to AAU.* A case described in paragraph (a)(4) of this section may be certified to the AAU.

(6) *Appeal to Board.* In a case within the Board's appellate jurisdiction, an unfavorable decision of the Service official to whom the case is certified (whether made initially or upon review) is the decision which may be appealed to the Board under §3.1(b) of this chapter.

(7) *Other applicable provisions.* The provisions of §103.3(a)(2)(x) of this part also apply to decisions on certified cases. The provisions of §103.3(b) of this part also apply to requests for oral argument regarding certified cases considered by the AAU.

(b) *Certification of denials of special agricultural worker and legalization applications.* The Regional Processing Facility director or the district director may, in accordance with paragraph (a) of this section, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) (the appellate authority designated in §103.1(f)(2)) of this part, when the case involves an unusually complex or novel question of law or fact.

[52 FR 661, Jan. 8, 1987, as amended at 53 FR 43985, Oct. 31, 1988; 55 FR 20770, May 21, 1990]

§ 103.5 Reopening or reconsideration.

(a) *Motions to reopen or reconsider in other than special agricultural worker and legalization cases—*(1) *When filed by*